

AMENDED IN ASSEMBLY MARCH 25, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 816

**Introduced by Assembly Member Reyes
(Principal coauthors: Assembly Members Canciamilla and
Richman)**

February 20, 2003

An act to add Section 9607.5 to the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to electric power.

LEGISLATIVE COUNSEL'S DIGEST

AB 816, as amended, Reyes. *Local publicly owned electric utilities*: Public Utilities Commission: direct transactions.

(1) Existing law authorizes the Department of Water Resources to administer existing contracts for the purchase of electric power, and to sell power to retail end use customers and, with specified exceptions, local publicly owned electric utilities, at not more than the department's acquisition costs. *Existing law imposes on retail end use customers of electrical corporations and community choice aggregators nonbypassable charges to repay certain costs of the department and electrical corporations.*

This bill would ~~require a municipality that forms a local publicly owned electric utility or an existing local publicly owned electric utility that annexes any portion of an electrical corporation's service area, to pay the department's electricity purchase costs in the same manner as those costs have been imposed on retail end use customers and community choice aggregators pursuant to existing law. The bill would require the commission to establish a cost recovery mechanism for the~~

~~recovery of the department's electricity purchase costs. The bill would prohibit the formation of a local publicly owned electric utility, or the annexation of any portion of an electrical corporation's service area by an existing local publicly owned electric utility, until the Public Utilities Commission establishes the cost recovery mechanism. The bill would require a local publicly owned electric utility to promptly remit to the party entitled to payment any charge imposed pursuant to these provisions~~ *additionally impose on a local publicly owned electric utility that begins serving electricity to existing or new load in the service territory of an electrical corporation, as that territory existed on February 1, 2001, responsibility for those repayment costs, as determined by the Public Utilities Commission. The bill would require the local publicly owned electric utility to determine the appropriate method by which to recover the costs imposed from its customers. The bill would require the cost recovery mechanism to ensure that any charges payable to the department and to the electrical corporation by a retail end use customer are promptly remitted to the party entitled to payment.*

(2) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to fix just and reasonable rates and charges. Existing law suspends, after a period of time to be determined by the commission, the right of a retail end use customer to acquire electricity from other electric service providers pursuant to direct transactions, until the department no longer supplies electricity under those provisions.

This bill would require the commission to reinstate the right of retail end use customers to acquire electricity from other electric service providers subject to specified conditions. Because a violation of an order of the commission is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. Section 9607.5 is added to the Public Utilities Code, to read:

(a) To prevent cost shifting of recoverable costs between customers, ~~a municipality that forms a local publicly owned electric utility or an existing local publicly owned electric utility that annexes any portion of an electrical corporation's service area;~~ shall pay the Department of Water Resources' electricity purchase costs in the same manner as those costs have been imposed on retail end use customers and community choice aggregators pursuant to subdivisions (d), (e), (f), and (g) of Section 366.1. The commission shall establish a cost recovery mechanism for the recovery of the Department of Water Resources' electricity purchase costs.

~~(b) A local publicly owned electric utility may not be formed; and an existing local publicly owned electric utility may not annex any portion of an electrical corporation's service area, until the commission establishes a cost recovery mechanism pursuant to subdivision (a).~~

~~(c) A local publicly owned electric utility shall promptly remit to the party entitled to payment any charges imposed pursuant to this section:~~ *customers, a local publicly owned electric utility that begins serving electricity to existing or new load in the service territory of an electrical corporation, as that territory existed on February 1, 2001, is responsible for the costs described in subdivisions (d), (e), (f), and (g) of Section 366.2, as determined by the commission.*

(b) The local publicly owned electric utility is not responsible for the costs described in subdivisions (d), (e), (f), and (g) of Sections 366.2 when it serves new load within its exclusive electric service territory as that territory existed on February 1, 2001.

(c) The local publicly owned electric utility shall determine the appropriate method by which to recover the costs imposed pursuant to this section from its customers. The cost recovery mechanism shall ensure that any charges payable to the Department of Water Resources and to the electrical corporation by a retail end use customer are promptly remitted to the party entitled to payment. Charges imposed pursuant to this section are nonbypassable.

SEC. 2. Section 80110 of the Water Code is amended to read:

1 80110. (a) The department shall retain title to all power sold
2 by it to the retail end use customers. The department shall be
3 entitled to recover, as a revenue requirement, amounts and at the
4 times necessary to enable it to comply with Section 80134, and
5 shall advise the commission as the department determines to be
6 appropriate. Such revenue requirements may also include any
7 advances made to the department hereunder or hereafter for
8 purposes of this division, or from the Department of Water
9 Resources Electric Power Fund, and General Fund moneys
10 expended by the department pursuant to the Governor's
11 Emergency Proclamation dated January 17, 2001. For purposes of
12 this division and except as otherwise provided in this section, the
13 Public Utilities Commission's authority as set forth in Section 451
14 of the Public Utilities Code shall apply, except any just and
15 reasonable review under Section 451 shall be conducted and
16 determined by the department. The commission may enter into an
17 agreement with the department with respect to charges under
18 Section 451 for purposes of this division, and that agreement shall
19 have the force and effect of a financing order adopted in
20 accordance with Article 5.5 (commencing with Section 840) of
21 Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, as
22 determined by the commission. In no case shall the commission
23 increase the electricity charges in effect on the date that the act that
24 adds this section becomes effective for residential customers for
25 existing baseline quantities or usage by those customers of up to
26 130 percent of existing baseline quantities, until such time as the
27 department has recovered the costs of power it has procured for the
28 electrical corporation's retail end use customers as provided in this
29 division.

30 (b) The right of retail end use customers pursuant to Article 6
31 (commencing with Section 360) of Chapter 2.3 of Part 1 of
32 Division 1 of the Public Utilities Code to acquire service from
33 other providers shall be reinstated by the Public Utilities
34 Commission, once each of the following conditions are met:

35 (1) The Public Utilities Commission has established a cost
36 responsibility surcharge for customers that opt for direct
37 transactions. Each retail end use customer that has purchased
38 power from an electrical corporation on or after February 1, 2001,
39 shall bear a fair share of the department's electricity purchase costs



1 that are recoverable from electrical corporation customers in
2 commission-approved rates.

3 (2) The State of California has issued revenue bonds pursuant
4 to Chapter 2.5 (commencing with Section 80130).

5 (3) The electrical corporations are procuring electricity under
6 procurement plans pursuant to Section 454.5 of the Public Utilities
7 Code.

8 (c) The department shall have the same rights with respect to
9 the payment by retail end use customers for power sold by the
10 department as do providers of power to those customers.

11 SEC. 3. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.

